

UNIVERSIDAD DE SALAMANCA

FACULTAD DE FILOLOGÍA

GRADO EN ESTUDIOS INGLESES

Trabajo de Fin de Grado

Forensic Translation: The Importance of the Linguistic Analysis and its Application to Forensic Linguistics

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This thesis is submitted for the degree of English Studies

Date: 9th July 2021

VºBº:

Signature:

Salamanca, 2021

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Abstract

This BA thesis is based on the scientific study of language applied to the forensic context of law. It has been proved that it can influence and play an important role in any legal ambit, and one way of doing this is through translation and interpretation. Translating and interpreting consist on reflecting the meaning of a word, spoken or written, from a source language to a target one. These linguistic disciplines are crucial for every judicial scene where two or more languages are involved. Nevertheless, there are other ways of blending language with law beyond the communication across different tongues; one of them is through legal linguistics, also known as Forensic Linguistics. Forensic Linguistics (FL) is a discipline which dates its beginnings back to the year 1968 in the United Kingdom, when this term was first coined by the professor and linguist Jan Svartvik, who declared that language could also be identified and used as forensic evidence. It is a branch of applied linguistics and consists on providing linguistic methods into the forensic ambit of law, focusing in three different areas: the written law, the use of language in forensic and judicial processes, and the research of linguistic evidence. There could be certain occasions where a language different from the evidence's original one is needed for the investigation. This can be solved through Forensic Translation, a combination of the previously mentioned disciplines, which refers to the interpreting actions that are applied in courts and in any kind of legal cases. This implies that it is first needed the translation of a specific text from one language to another so it can be, afterwards, analysed.

Key words: language, Forensic Linguistics, interpreting, written law, linguistic evidence, forensic translation.

Resumen

El presente trabajo se centra en el estudio científico del lenguaje aplicado al contexto forense de la ley. Ha sido demostrado que este puede influenciar y jugar un papel importante en cualquier ámbito legal, y una forma de conseguir esto es a través de la traducción e interpretación. Traducir e interpretar consiste en reflejar el significado de una palabra, hablada o escrita, de una lengua a otra distinta. Estas disciplinas lingüísticas son cruciales para cualquier caso jurídico en el que estén involucrados dos o más idiomas. Aun así, hay muchas otras formas de fusionar el lenguaje con la ley más allá de la comunicación entre diferentes lenguas, siendo una de ellas la lingüística del ámbito legal, también denominada Lingüística Forense. La Lingüística Forense es una disciplina cuyos orígenes datan del año 1968 en Reino Unido, cuando el término fue acuñado por primera vez por el profesor y lingüista Jan Svartvik, quien declaró que el lenguaje también podía ser identificado y utilizado como evidencia forense. La lingüística forense es una rama de la lingüística aplicada y consiste en aportar métodos lingüísticos al ámbito forense de la ley, especializándose en tres áreas diferentes: la ley escrita, el uso del lenguaje en procesos judiciales y forenses, y la investigación de evidencia lingüística. Existen ocasiones en las que un lenguaje diferente al de las evidencias originales es necesario para la investigación. En estos casos el problema se puede resolver a través de la Traducción Forense (una combinación de las disciplinas previamente mencionadas), que se refiere a las interpretaciones que pueden aplicarse en juicios y en cualquier tipo de casos legales. Esto implica que, en primer lugar, necesitamos la traducción de un texto específico de un idioma a otro para que pueda, más adelante, ser analizado.

Palabras clave: lenguaje, Lingüística Forense, interpretación, ley escrita, evidencia lingüística, traducción forense.

1. Introduction

Language and the ability of communicating is something that the human race has intrigued since the beginning of times. We have gone through petroglyphs, hieroglyphs, scribes, ... until recently arriving into complex interpreting software. As the authors Jeff Connor-Linton and Ralph W Fasold once stated in their book *An Introduction to Language and Linguistics*, it is, indeed, hard to imagine how there could even exist history without language. Language is a structured system inherent to humans; transferring complex information, discussing the meaning of events and possible outcomes of alternative actions, or sharing feelings and ideas would be something impossible without it, as they claim. Although some records suggest its birth dates back to 200,000 years ago, the truth is that its origins are almost uncertain. However, knowing or not when it was specifically born, we still can affirm that language is one of the most useful abilities developed by people. Everybody, unconsciously, uses it as a daily basic mechanism, rather in a spoken or written way. We become in contact with language even before we are born, and it could be certainly said that life would not be the same without it.

According to the Oxford English Dictionary (OED), the word 'language' refers to "the system of communication in speech and writing that is used by people of a particular country or area". Although it is something universal, it can be classified according to different areas. Actually, there exist approximately 7117 languages spread all over the world. Therefore, this term implies itself a huge variety but, still, encompasses each and every way of communicating we have between one and other, either in a verbal, physical or written way. Every time we aim to express something, we are using language. This is the reason why it has such a great importance and, consequently, so many specific branches have been and are starting to focus

more deeply on the study of this particular phenomenon. Within this variety, my thesis will be built on a specific one: linguistics. Linguistics consists in the scientific study of language and all its aspects, taking into account the different methods to approach it. This field has become crucial in the study of language and makes possible the analysis of diverse specific areas, such as the phonetical, phonological, morphological or syntactical ones. According to Chomsky, it could be considered as the "creative aspect" of language. Thus, just as language is considered a genuinely broad concept embracing many bits and pieces, so could be linguistics.

The present dissertation is going to be focused on two crucial scopes related to this discipline: translation and forensic linguistics. At first sight, we could say these two fields have nothing in common; translating consists in transferring one message in a source language into a target one, while the forensic branch of linguistics is focused on the specific analysis of the language used in law. However, my aim is to show how these two can be combined and how this combination can become necessary in certain legal situations. I will achieve this by analysing this blend, which is called Forensic Translation. The concept Forensic Translation encompasses both the art of language and law. In this discipline are necessary the capacity of analysing and interpreting language, and a sufficient legal knowledge. Through this, I would like to show the importance of language and how it can be applied in other areas beyond the ones we are already familiar with. As, up until now, the linguistic discipline is something still taken for granted, my final goal is to give it the visibility and worth it deserves.

2. Translating and Interpreting as a part of Forensic Linguistics.

As mentioned in the introduction, this section will be focused on the areas of translation and interpretation. For this reason, it will be divided in two parts. The first one consists of an analysis of both of them as separate aspects, mentioning their similarities and differences. Moreover, I will examine the combination of both; in which ways they can work together and

how important this blend can be. In the second part of the section, the focus will be on the legal ambit; how translation and interpretation can be applied to law, and how their work can become necessary for it.

2.1 Translation and Interpretation: the key differences and their combination.

Translation is an act through which the content of a text is transferred from the source language into the target language (Foster, 1958). Translating consists in reflecting the same intended meaning a text or speech aims to project in a specific language, through a different one. This discipline involves every aspect necessary to transfer ideas, concepts and all that can be represented by a language. Its importance is really significative, as it is also the way we have to connect with different cultures; a special path to globalization and a form of interlocking the whole world. In order to achieve it correctly, there are certain traits that a considered good translator needs. Some examples of these are having a certain fluency, being able to understand and communicate more than one language at a near-native level, possessing a minimal awareness on modern trends of vocabulary, and being specialized in more curtailed areas. However, not only a translator needs to have a good knowledge about both the source and the target language, but also a high linguistic sensitivity in order to transmit the writer's or speaker's intention, something which can only be achieved through interpretation. In the words of the Webster dictionary, interpretation is the "action of explaining the meaning of something; the way something is explained or understood". In terms of language, an interpreter must not only interpret meaning, but also the original message's tone and intent. Although these two disciplines have certain things in common, such as their deep knowledge about language, there are also other factors that helps us differentiate them; for example, while interpretation takes place in a real-time format the majority of times, translation is mostly based on texts.

2.2. Legal linguistics.

Having already seen what translation and interpretation are and how they can differ from each other, we are now going to study how they can be applied in the ambit of law; in which ways these two disciplines can become useful in any legal environment. To achieve this, we should firstly bear in mind that applying language in judicial areas would not be possible without the existence of legal linguistics. According to what Salmi-Tolonen says in her book *Language in the Negotiation of Justice. Contexts, Issues and Applications*; "legal linguistics studies law with linguistic methods and the outcome of the studies can help legal practitioners do and understand their work better through an increased understanding of how language works in general and in legal domains in particular". In other words, we could claim that legal linguistics is the field that allows law to perform through language and with the help of it. To correctly relate this discipline with the ones mentioned before, we should make a division between two different branches: legal translation and legal interpretation.

Legal translation is the area of translation that alters legal documents and materials from a source language to any target one, being loyal to its original meaning. Thanks to this work, important documents such as contracts, policies or licenses can become clearly understood and analysed, not only in their original language, but in any other one that could be necessary. Concurrently, legal interpretation involves the explication of a law, agreement, or any other legal document that could be considered ambiguous; the aim of this is to find out what the purpose of each of them is and if they clearly explain it or not. Both fields have in common that they require a complete knowledge of law and linguistics, although their final goals are not the same. However, while they are not used to obtain the same results, they can still be applied simultaneously, if necessary. Though both of them are able to assess mostly any area within law, a scope through which they could be applied in a more detailed way is forensic linguistics.

3. Forensic Linguistics: crime investigation through a branch of applied linguistics.

'Forensic Linguistics' is a term firstly claimed by the linguistic professor Jan Svartvik in his book *The Evans Statements: A Case for Forensic Linguistics* back to the year 1968. It could be defined as the branch of linguistics where the knowledge about language is applied to the legal ambit; or, in other words, as "the interface between language and the law" (Gibbons, 2008:1). This discipline not only consists in analysing the language and linguistics involved in a crime, in fact, it encompasses a so much wider spectrum that it can be divided in three different areas of expertise, which are the area of language in a written legal text, the area where the linguist acts as an expert witness and the spoken language of the legal process.

The first area of Forensic Linguistics mentioned consists in the analysis of the vocabulary, grammar and punctuation involved in any type of legal text to avoid misunderstandings or unclear information. By legal text we refer to the several types of written materials created for diverse purposes that are related to the law. In these kinds of texts, language and its uses are an indispensable factor, because any aspect related with it could easily be considered as ambiguous or confusing. This kind of confusions may lead to a series of misapprehensions or interpretation problems that could end up being accounted as unclear. For this reason, the help of experts is considered a priority when dealing with legal texts. There are many things that can be considered ambiguous when dictating a legal material; some of them could be a wrong use of the comma, a failed concordance with the subject in a sentence, a bad structured passive voice or even an improper use of adverbs and relative pronouns. However, the need of an expert when writing or reading a legal text does not always imply a negative connotation; its help could simply be used to edit it in order to improve sales or incomes in a company. This can be achieved thanks to the use of what is called plain language, which is the term that refers to a clear and effective communication. Numerous examples of this are shown by Joseph Kimble in his book *Writing for Dollars, Writing to Please: The Case*

for Plain Language in Business, Government, and Law. A specific one could be the case of the Cleveland Clinic, which in 2008 was able to recover 1 million dollars a month after being accused of confusing bills; all this by just simplifying their statements. Another way Forensic Linguistics works is by making the linguist to function as an expert witness. In this case, the experience and knowledge from the forensic linguists is requested for shedding light into police investigations or court processes. Specifically, the linguist is usually called to help the jurors with technical concepts. The experts, in this case, must prove their testimonies with enough reliable objective facts and data. To be able to act as a witness, the linguist must be independent and unbiased.

The last way of applying Forensic Linguistics is related to the language present in a court; it is specialized in scanning what and how the diverse linguistic varieties are implied in a courtroom by the different contestants, such as the judge, the witnessed, the victims, ... This does not only imply the analysis of the language used in the nature of law discourse, but also the examining of the linguistic and socio-cultural factors which influence the choice of the specific lexical and syntactic features. Moreover, the importance when examining the spoken language present in a legal process does not only rely on the verbal communication, but also on the non-verbal one, such as physical evidence or the physical setup, which could be considered as important. The aim of interpreting legal discourse is to pursue the underlying intentions within it, more than only the surface and visible ones. To achieve this, one of the most useful theories that can be applied is the Critical Discourse Analysis. CDA consists in "an interdisciplinary approach to the study of discourse that views language as a form of social practice", which, in other words, means that this method aims to examine the different social and linguistic factors that may lead someone to use language in one way or another in any legal landscape. Through this, we can attain and expose the diverse ways in which factors such as power, dominance or inequality are portrayed through linguistic means. An example of

dominance and inequality used by Brilliant Richard and Sumenenua Suzi Nwizug in their article "A Critical Discourse Analysis of Courtroom Proceedings in Nigeria" is the following:

Prosecuting Counsel: Objection my Lord! The defence counsel is misleading the witness.

Presiding Judge: Objection overruled, let the witness answer the question.

Defence Counsel: Objection my Lord! The prosecution counsel is misleading the witness.

Presiding Judge: Objection sustained, please counsel direct your questions properly.

In this specific scenario we can observe the noticeable hierarchy implied in a courtroom thanks to the linguistic discourse. While the two counsels have the tight authority to object, they still are dependent on the highest decision, which can only be made by the presiding judge. Meanwhile, we have the position of the witnesses, who are only given the power of answering the questions they are formulated. By analysing the language in this example, we can clearly view the distribution of authority and how much is given to each of the members present in the court, and how they can never exceed it.

In a nutshell, interpreting a legal discourse involves different influencing factors which can be extensively analysed. Sometimes there is further work needed more than the dissection of verbal and non-verbal discourse, such as when two or more languages become involved in a court. In this case, the presence of a translator would become necessary.

4. The discipline of Forensic Translation: where language and law intersect.

As already mentioned, Forensic Linguistics is a discipline that can be divided in different areas. There are many legal ambits where an analysis of language is requested, and to achieve this, we actually need to understand what we are dissecting. In order to do so,

sometimes the intermediate step of translating from an original language to any target one is necessary. In these cases, we come to the aid of what is called Forensic Translation. This term is accurately defined by Siddig Ahmed Ali and Mohamed Abd Allah, members of Taif University, Saudi Arabia, who state that:

Forensic translation includes court interpreting and translation within any legal context. It is also known as legal, judiciary, or forensic interpreting, refers to interpreting services provided in courts of law and in legal cases of any sort. According to Gonzalez. et al. (1991), legal interpretation refers to interpretation that takes place in a legal setting such as a courtroom or an attorney's office, wherein some proceeding or activity related to law is conducted. Legal interpretation is subdivided according to the legal setting into (1) quasi-judicial and (2) judicial interpreting or what is normally referred to as court interpreting. In the interim, forensic linguistics has grown exponentially, both in the number of people with an interest in practicing it and in the number of disciplines and sub-disciplines within its ambit. For instance, forensic translation is a new multidisciplinary discipline that emerging in Translation Studies and plays a vital role in forensic analysis, forensic evidence and criminal investigations. This type of translation is considered significant for a number of reasons. First, it protects the legal rights of the suspect/defendant. May be an innocent suspect is jailed and guilty is set free, so a translator or interpreters can infer to help the judge issue the right verdict. They are involved in many areas that relate to crime, both solving crime and absolving people wrongly accused of committing crimes.

As we can see, the important role played by translation in law is extremely accentuated. Nowadays, everyone has their personal right to own a translator or interpreter in any legal situation. This right is undeniable because everyone deserves the opportunity to have a fair trial, as being declared guilty or not depends on it. Translating in the ambit of law does not

only consist in the ability of dominating more than one language, but also implies the extra responsibility of being aware of the different legal terms that can be used in any specific occasion. In order to develop their job correctly, translators need to be fluent on the vast variety of legal terminology. Furthermore, they also should not only master the field of written or spoken language, but also be aware of the different intentions that can be implied in any linguistic exchange. Sometimes the importance does not rely in what is said, but instead it is in what is meant, especially in a legal environment. Also, some specific skills may help to achieve a better translation, more than just the personal knowledge. Interpreters should be impartial, they cannot choose any side or be biased when doing their job, as the final result would end up being completely unfair. Another important thing is confidentiality, it is an indispensable factor to gain their clients' trust; they should never have reasons to feel mistrustful.

To highlight the responsibility of an accurate and professional translation, we are going to see an example of how a malpractice of this can lead to irrevocable consequences. A remarkable incident where judicial mistranslation changed the outcome of a court case is the one of Santiago Ventura Morales. Morales was a Mexican social worker in the state of Oregon who was falsely convicted of murder in 1986. He was accused of stabbing and killing a 19-year-old farm worker in a strawberry field due to a fight. In his trial, Morales was provided a Spanish interpreter, when his native language was Mixtec. The lack of an appropriate translator led him to be considered guilty and to be arrested with a sentence of ten years in prison, even though there was a shortage of evidence. While in jail, he was helped to learn English correctly in order to have the possibility to defend himself, as he did five years later, in 1991, when he got a proper assistance and was finally released and declared innocent. We can see through this example the importance and necessity of a good translation. People who cannot defend themselves by their own means due to any barrier, in this case language, need to have the

determination and assurance to rely and trust on someone who is influencing their future. For this reason, it is so important for a translator to fulfil a certain kind of indispensable requirements that can support his interpretation. It is necessary to outline this importance, as the wrong development of this job can irredeemably influence on the future of any person.

5. Conclusion

On the whole, this dissertation has shown how the ambit of linguistics can be applied into different fields and in which ways it can become useful for them. As a way of introducing, we have firstly seen how language is a phenomenon that is present and necessary in every aspect of our life. Without any doubt regarding this statement, I have carried on focusing specifically on the discipline of law and in the diverse ways in which language can contribute and be useful for it. A more in-depth research has been made leading into the specific area of Forensic Linguistics, a recent discipline which is still flourishing. Finally, certain light has been shed over the importance that translation and interpretation can have in judicial scenarios, and how their correct implementation can become really important in certain situations. All in all, I would say that the application and visibility of linguistics in relation with law is still something barely developed. For this reason, and as an ultimate conclusion, I must state that further investigations are still needed to be made, in order to endow language with the recognition it deserves in other fields different from the traditional ones.

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